

Application # 09/921,542
Response dated March 4, 2005
Reply to Office Action dated November 4, 2004

PATENT
P-5204

REMARKS

Claims 9 and 10 have been amended.

Claims 1-4 and 6-10 are still pending in the present application.

Claims Rejection – 35 USC § 112

The Examiner states “Claims 9 and 10 are rejected under 35 U.S.C. § 112 second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. The claims each recite “said sample vessel holder”. However, independent claim 1 has been amended to no longer require a “sample vessel holder””.

Claims 9 and 10 have been amended by replacing “sample vessel holder” with “panel”.

Applicants submit proposed amendments fully address this rejection.

Claims Rejection – 35 USC § 102

Claims 1 and 6-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent application No. 2,974,018 to McNeilly (“McNeilly”).

This rejection is respectfully traversed.

Claim 1 is directed to a system for stirring a solid suspended in a liquid media in a sample vessel, said system comprising, among other things: a panel, containing one or more openings in which sample vessels are held, wherein said openings are tilted with respect to the horizontal, such that said sample vessels when held in said openings are tilted at an angle substantially less than 90 degrees with respect to the horizontal.

The Examiner states “the references to “the horizontal” do not establish orientation with respect to a claimed element, but instead “horizontal” is with respect to an element which is not part of the claimed structure, such as the surface of the Earth.”

Horizontal is defined by;

Webster’s Third New International Dictionary as “parallel to the horizon: being on a level: measured or contained in a plane of the horizon: placed or operating chiefly along a plane parallel to the horizon.”

The American Heritage Dictionary (Second College Edition) as “Parallel to or in the plane of the horizon.”

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MPEP§2111.01 I. states "<THE WORDS OF A CLAIM MUST BE GIVEN THEIR "PLAIN MEANING" UNLESS THEY ARE DEFINED IN THE SPECIFICATION", also MPEP§2111.01 II. states "<"PLAIN MEANING" REFERS TO THE >ORDINARY AND CUSTOMARY< MEANING GIVEN TO THE TERM BY THOSE OF ORDINARY SKILL IN THE ART". Therefore in this application, a person of ordinary skill in the art understands that the term "the horizontal" does establish a constant orientation reference point that is parallel to the plane of the horizon, from which the orientation of the claimed element is defined.

McNilly teaches an improvement to the Van Slyke volumetric apparatus for determining the gas content of blood, of the type where mercury is used as the confining fluid. McNeilly discloses, as reflected in Figs. 1, 2 and 3, an upright sample vessel (46) containing a stirring bar (50) comprising of magnetic material, a first magnet (74) adjacent to the vessel, means (72) (76) for rotating the first magnet and a second magnet (78) fixedly mounted adjacent to and above the first magnet, the second magnet also being adjacent to the upright sample vessel.

Applicants respectfully point out McNeilly fails to disclose at least the claimed features of: a panel, containing one or more openings in which sample vessels are held, wherein said openings are tilted with respect to the horizontal, such that said sample vessels when held in said openings are tilted at an angle substantially less than 90 degrees with respect to the horizontal. Thus, McNeilly does not anticipate claim 1.

For these reasons, applicants submit that amended claim 1 and dependent claims 6-10 are not anticipated by the McNeilly reference.

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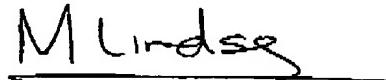
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In view of the remarks and amendments herein, applicants submit the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,



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